

SUMMARIZATION OF THE UNIFORM TRUST CODE, SECTION BY SECTION

Article 1

General Provisions and Definitions

Section	Analysis
101	<i>Short title.</i> “Uniform Trust Code”
102	<i>Scope:</i> Applies to express trusts and is directed primarily toward trusts in an estate planning or donative context.
103	<i>Definitions.</i> Defines 19 terms used in the Uniform Trust Code (“UTC”).
104	<i>Knowledge.</i> Specifies when a person is deemed to know a fact.
105	<i>Default and Mandatory Rules.</i> UTC is a default statute, with procedural rules that the settlor may override, subject to several exceptions.
106	<i>Common Law of Trusts – Principles of Equity.</i> The Code codifies some provisions of the common law of express trusts and supplements common law trusts.
107	<i>Governing Law.</i> Provides rules to determine the law governing the trust.
108	<i>Principal Place of Administration.</i> Sets rules relating to the place of administration, which usually determines the jurisdiction governing the trust. The principle place of administration is normally where the trustee is located.
109	<i>Methods and Waiver of Notice.</i> Describes the notice requirements.
110	<i>Others Treated as Qualified Beneficiaries.</i> Describes what individuals are to be treated as a Qualified Beneficiary (defined in 103(12)).
111	<i>Nonjudicial Settlement Agreements.</i> This section facilitates these agreements by giving them the same effect as if court approved. However, these agreements cannot be used to produce a result not authorized by law.
112	<i>[Rules of Construction].</i> Provides that the rules of construction interpreting the disposition of property by Will are also appropriate to interpret the terms of the trust instrument and the disposition of trust property.

Article 2

Judicial Proceedings

Section	Analysis
201	<i>Role of Court in Administration of Trust.</i> While the UTC encourages nonjudicial settlements, courts are available where an interested person invokes a court’s jurisdiction.
202	<i>Jurisdiction Over Trustee and Beneficiary.</i> Describes how courts have jurisdiction over the trust, trustee and beneficiaries. However, jurisdiction granted under this section does not preclude other court’s also having jurisdiction over the trust, trustee and beneficiaries.
203	<i>[Subject-Matter Jurisdiction].</i> Provides a way to distinguish a court having primary jurisdiction from other courts that occasionally have jurisdiction to resolve trust disputes.
204	<i>[Venue].</i> Provides venue rules for jurisdictions where that jurisdiction’s venue rules for judicial proceedings are not addressed adequately in their local rules of civil procedure.

Article 3
Representation

Section	Analysis
301	<i>Representation - Basic Effect.</i> Provides the scope of this Article, validates substitute notice upon the representative, deals with the effect of a consent and representation of another without capacity.
302	<i>Holder of General Testamentary Power.</i> Specifies the circumstances where a holder of general testamentary power may receive notices, represent and bind other persons, unless there is a conflict of interest.
303	<i>Fiduciaries and Parents.</i> Allows for representation of persons by their fiduciaries or parents, including settlors and beneficiaries, unless there is a conflict of interest.
304	<i>Persons Having Substantially Identical Interests.</i> Allows a person with a substantially identical interest, regarding a particular question or dispute, to represent and bind an unrepresented minor, incapacitated or unborn individual, or person who's location is unknown.
305	<i>Appointment of Representative.</i> Allows a person to appoint a representative (which is different than an "guardian ad litem") to act in a nonjudicial settlement or to receive notice.

Article 4
Creation, Validity, Modification, and Termination of Trust

Section	Analysis
401	<i>Methods of Creating Trust.</i> Specifies that to create a trust there must be a transfer of property, a declaration by the owner, and exercise of power of appointment
402	<i>Requirements for Creation.</i> To create a trust a settlor must have capacity, an intention to create a trust, the trust must have a definite beneficiary, a trustee must have powers to perform and a same person cannot be sole trustee and sole beneficiary.
403	<i>Trusts Created in Other Jurisdictions.</i> Addresses the validity, in the enacting jurisdiction, of trusts created in other jurisdictions.
404	<i>Trust Powers.</i> Forbids creation of trusts that are created for illegal or improper purposes or against public policy. Additionally, this section requires that a trust must be for the benefit of its beneficiaries.
405	<i>Charitable Purposes; Enforcement.</i> States the purposes and categories of charitable trusts.
406	<i>Creation of Trust Induced by Fraud, Duress, or Undue Influence.</i> A trust is void if created under fraud, duress, or undue influence.
407	<i>Evidence of Oral Testimony.</i> Provides for creation of oral trusts only upon establishing clear and convincing evidence.
408	<i>Trust for Care of Animal.</i> Specifies the requirements for the creation and enforcement of a trust for the care of an animal.

Article 4 continued

Section	Analysis
409	<i>Noncharitable Trust Without Ascertainable Beneficiary.</i> Allows for two types of trusts without ascertainable beneficiaries as long as the purpose is not capricious. The disposition is enforceable as a trust for up to 21 years.
410	<i>Modification or Termination of Trust; Proceedings for Approval or Disapproval.</i> Lists grounds on which trusts normally terminate. This section provides that termination of a trust may be either in whole or in part and specifies who has standing to bring an action to terminate a trust.
411	<i>Modification or Termination of Noncharitable Irrevocable Trust by Consent.</i> Describes how a beneficiary may compel the termination or modification of these types of trusts. Termination or modification, under this section, may occur without the consent of the settlor and over a trustee's objection.
412	<i>Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively.</i> This section broadens a court's ability to apply equitable deviation to terminate or modify a trust, allowing a court to modify inopportune details to better effectuate a settlor's broader purposes.
413	<i>Cy Pres.</i> A court may apply the power of Cy Pres to modify an administrative or dispositive term. This section modifies the doctrine of Cy Pres by presuming that the settlor had a general charitable intent when a particular charitable purpose becomes impossible or impracticable. If charitable intent is found then the trust property is applied to other charitable purposes. If no charitable intent is found the court must either modify the terms of the trust or distribute the property in a manner consistent with the settlor's charitable purposes, unless the settlor stated otherwise.
414	<i>Modification or Termination of Uneconomic Trust.</i> Specifies that a trustee may without a judicial termination proceeding, terminate a trust with a value below a certain value (\$50,000 or amount set by an enacting jurisdiction) if it is likely to be inefficient to administer. A court may modify or terminate a trust if the costs of administration would be excessive in relation to trust's size. Upon termination, the trust property must be distributed consistent with the trust's purpose.
415	<i>Reformation to Correct Mistakes.</i> This section applies to reformation of mistakes, either of expressions or inducement, in order for the trust to reflect the settlor's intent. Reformation may include the addition or deletion of language to the trust if it is necessary to conform the instrument to the settlor's intent.
416	<i>Modification to Achieve Settlor's Tax Objectives.</i> Allows modification of trust terms to meet the settlor's tax-saving objective as long as the change in terms are not inconsistent with the settlor's probable intent.
417	<i>Combination and Division of Trusts.</i> This section provides for a trustee to combine trusts (even if their terms are not identical) and divide a trust (even if the divided trusts are dissimilar). There is no requirement that either a court or beneficiaries approve the combination or division of a trust.

Article 5
Creditor's Claims: Spendthrift and Discretionary Trusts

Section	Analysis
501	<i>Rights of Beneficiary's Creditor or Assignee.</i> This section provides that without a valid spendthrift provision a creditor may reach a beneficiary's interest in a trust. However, creditor law of a State may limit the creditor's ability to collect trust distribution.
502	<i>Spendthrift Provision.</i> Provides that a settlor has the ability to restrain the transfer of a beneficiary's interest to a creditor, unless an exception applies. A spendthrift provision is ineffective against a beneficial interest retained by the settlor.
503	<i>Exceptions to Spendthrift Provisions.</i> Lists the category of creditors whose claims are not subject to a spendthrift restriction. The Code does not create a spendthrift exception for tort claimants or creditors who furnish either necessary services or supplies to a beneficiary.
504	<i>Discretionary Trusts; Effect of Standard.</i> Addresses a creditor's ability to reach a beneficiary's discretionary trust interest. This section provides a spouse, former spouse, or child claimant to compel a distribution to the extent the trustee has abused discretion or failed to compel with a standard for distribution.
505	<i>Creditor's Claim Against Settlor.</i> Provides that a settlor, who is a beneficiary, may not use a trust as a shield against the settlor's creditors. Settlor's creditors may reach the maximum amount that the trustee could have paid to the settlor-beneficiary, even if it is the entire income and principal of the trust.
506	<i>Overdue Distribution.</i> Provides that a trustee should not be able to avoid a creditor's claims against a beneficiary by refusing to make required distributions.
507	<i>Personal Obligations of Trustee.</i> Provides that a trustee may not use trust property to settle a trustee's obligations.

Article 6
Revocable Trusts

Section	Analysis
601	<i>Capacity of Settlor of Revocable Trusts.</i> Provides that the capacity standard for trusts is the same requirement for wills.
602	<i>Revocation or Amendment of Revocable Trusts.</i> Provides the procedure to revoke or amend revocable trusts, regardless of the number of settlors.
603	<i>Settlor's Powers; Powers of Withdrawal.</i> Provides, while the trust is revocable and the settlor has capacity, a settlor may control the rights of the beneficiaries.
604	<i>Limitation on Action Contesting Validity of Revocable Trusts; Distribution of Trust Property.</i> Describes the statute of limitations to contest revocable trusts and provides expeditious distribution of the trust property following the settlor's death.

Article 7
Office of Trustee

Section	Analysis
701	<i>Accepting or Declining Trusteeship.</i> Specifies the requirements for a valid acceptance of trusteeship and that a designated person's failure to accept within a reasonable time constitutes a rejection.
702	<i>Trustee's Bond.</i> Specifies that a bond is required only if the terms of the trust require a bond or if a court finds a bond necessary for a bond to protect the interests of beneficiaries.
703	<i>Cotrustee.</i> Permits cotrustees to act by majority action, specifies the extent that one trustee may delegate to another, and allows for a dissenting trustee to give notice to the other trustees and avoid liability of breach of trust.
704	<i>Vacancy in Trusteeship; Appointment of Successor.</i> Contains a list of ways a trusteeship becomes vacant and specifies the rules on filling the vacancy. This section applies if the trust terms fail to specify a procedure to fill a vacancy.
705	<i>Resignation of Trustee.</i> Specifies the procedure for a trustee to resign.
706	<i>Removal of Trustee.</i> Specifies the procedures where a settlor, cotrustee, beneficiary, or court can remove a trustee.
707	<i>Delivery of Property by Former Trustee.</i> Provides that a former trustee must move expeditiously to deliver the trust property to a cotrustee or successor trustee.
708	<i>Compensation of Trustee.</i> Specifies that if a trustee's compensation is not set out in the terms of the trust, then the trustee should receive reasonable compensation.
709	<i>Reimbursement of Expenses.</i> Specifies that a trustee may receive reimbursement from the trust for incurring reasonable expenses within the trustee's authority.

Article 8
Duties and Powers of Trustee

Section	Analysis
801	<i>Duty to Administer Trust.</i> Specifies that the trustee has a duty to follow the terms and purposes of the trust in good faith.
802	<i>Duty of Loyalty.</i> Specifies that the trustee has a duty of loyalty toward the beneficiaries and addresses the circumstances where a trustee's actions are a breach of the trustee's duty of loyalty toward the beneficiaries.
803	<i>Impartiality.</i> Specifies that the trustee has a duty to act impartially toward the beneficiaries in all aspects of trust administration and in decisions by a trustee with respect to distributions.
804	<i>Prudent Administration.</i> Specifies that the trustee has a duty to administer a trust with prudence.
805	<i>Cost of Administration.</i> Specifies that a trustee may incur only costs that are reasonable in trust administration.

Article 8 Continued

Section	Analysis
806	<i>Trustee's Skills.</i> Specifies that a trustee with special skills or expertise must use these in administration of the trust.
807	<i>Delegation by a Trustee.</i> Permits a trustee to delegate various aspects of trust administration to agents, subject to standards under this section.
808	<i>Powers to Direct.</i> Provides that in a revocable trust a trustee may follow a settlor's directions even if they are contrary to the terms of the trust.
809	<i>Control and Protection of Trust Property.</i> Specifies that the trustee has a duty to take reasonable steps to take control and safeguard trust property.
810	<i>Recordkeeping and Identification of Trust Property.</i> Specifies that the trustee has a duty to keep adequate records regarding administration of the trust and the trustee shall not commingle trust property with the trustee's property.
811	<i>Enforcement and Defense of Claims.</i> Specifies that the trustee shall enforce claims of the trust and defend claims against the trust.
812	<i>Collecting Trust Property.</i> Specifies that the trustee shall collect trust property from a former trustee or other person(s).
813	<i>Duty to Inform and Report.</i> Specifies that the trustee has a duty to keep qualified beneficiaries reasonably informed regarding the administration of the trust, which is necessary to enable the qualified beneficiary to enforce rights and to prevent or redress a breach of trust.
814	<i>Discretionary Powers; Tax Savings.</i> Specifies that a trustee in exercising discretionary power must do so in good faith and consistent with the terms and purpose of the trust. The provisions of this section automatically rewrite terms of the trust that might fail to qualify for probable intended tax benefits.
815	<i>General Powers of Trustee.</i> Addresses the intention of the Code to grant the broadest possible powers to be exercised in accordance with the duties of the trustee and any limitations stated in the terms of the trust.
816	<i>Specific Powers of Trustee.</i> Enumerates specific powers commonly included in trust instruments and trustee powers legislation. All powers listed are subject to limitation or alteration in the terms of the trust.
817	<i>Distribution upon Termination.</i> Provides procedures to govern the distribution of trust assets upon termination or partial termination of the trust.

Article 9

Uniform Prudent Investor Act ("UPIA")

No effort has been made to disassemble and integrate the UPIA into the UTC. However, states adopting the UTC that have previously enacted the UPIA are encouraged to reenact their version of the UPIA as Article 9 of the UTC.

Due to the overlap between Article 8 and the UPIA, where the UPIA and UTC are duplicative, enacting jurisdictions are encouraged to enact the UPIA in this article but *without* the provisions already addressed in Article 8 of the UTC.

Article 10
Liability of Trustees and Rights of Persons Dealing with Trustees

Section	Analysis
1001	<i>Remedies for Breach of Trust.</i> Lists the remedies available to rectify or prevent a breach of trust and specify when a trustee breaches one of the duties contained in the Code.
1002	<i>Damages for Breach of Trust.</i> Provides how money damages for breach of trust are to be determined.
1003	<i>Damages in Absence of Breach.</i> Provides that the trustee is accountable for profits made from that trust even in the absence of a breach of trust. A trustee should not be allowed to use the trust as a means for personal profit other than for routine compensation earned.
1004	<i>Attorney's Fees and Costs.</i> Reaffirms the court's power in equity to award costs and attorney's fees, as justice requires.
1005	<i>Limitations of Action Against Trustee.</i> Addresses when the statute of limitation begins on actions against the trustee.
1006	<i>Reliance on Trust Instrument.</i> Protects a trustee who acts in reasonable reliance on the terms of a written trust instrument.
1007	<i>Event Affecting Administration or Distribution.</i> Protects a trustee who has exercised reasonable care to ascertain the occurrence of events that might effect distribution.
1008	<i>Exculpation of Trustee.</i> Describes the effect and limits on the use of an exculpatory clause. Even if the terms of the trust attempt to completely exculpate a trustee for the trustee's acts, the trustee must always act in good faith with regard to the purposes of the trust and interests of the beneficiaries.
1009	<i>Beneficiary's Consent, Release, or Ratification.</i> Addresses the standards for recognizing a beneficiary's approval of trustee's acts that might otherwise constitute a breach of trust. This section requires an affirmative act by the beneficiary, a failure to object is not sufficient.
1010	<i>Limitations on Personal Liability of Trustee.</i> Negates personal liability on contracts entered into by the trustee if the fiduciary capacity was properly disclosed. The trustee is also relieved from liability for torts committed in the course of administration unless the trustee was personally at fault.
1011	<i>[Interest as General Partner].</i> Negates personal liability for contracts entered into by partnerships, where the trustee is a general partner, as long as the fiduciary capacity was disclosed in the contract or partnership certificate.
1012	<i>Protection of Person Dealing with Trustee.</i> Protects persons, other than beneficiaries, who deal with a trustee in good faith and without knowledge that the trustee is exceeding or improperly exercising a power.
1013	<i>Certification of Trust.</i> Permits a third party to rely on a certification of trust, thereby reducing the need for a third party to request a copy of the complete trust instrument. This section was designed to protect the privacy of a trust instrument by discouraging requests from persons other than beneficiaries for complete copies of the instrument in order to verify a trustee's authority.

Article 11
Miscellaneous Provisions

Section	Analysis
1101	<i>Uniformity of Application and Construction.</i> States the need to promote uniformity of law among the states.
1102	<i>Electronic Records and Signatures.</i> Provides that this Act conforms to the requirements of the federal Electronic Signatures in Global and National Commerce Act and preempts this federal act. The effect of this section is to leave to state law the procedures for obtaining and validating an electronic signature.
1103	<i>Severability Clause.</i> Invalidity of one clause of this Code does not effect other provisions or applications of this Code.
1104	<i>Effective Date.</i> The date this Code takes effect in a particular state when enacted.
1105	<i>Repeals.</i> Repeals several uniform acts.
1106	<i>Application to Existing Relationships.</i> Provides that the Code applies to all trusts whenever created, to judicial proceedings concerning trusts commenced on or after its effective date, and unless the court otherwise orders, to judicial proceedings in progress on the effective date.